

APPEAL NO. 021786
FILED AUGUST 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 17, 2002. The hearing officer determined that on _____, the appellant (claimant) did not sustain a compensable injury and that because there was no injury, there can be no disability. The claimant appeals, contending that the hearing officer erred in not adding a "deadline" issue. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant's appeal asserts that the hearing officer erred in not adding an issue of "deadline" (waiver) to determine whether the carrier failed to contest compensability within seven days. The claimant asserted she had good cause because of the recent Supreme Court decision in Continental Casualty Company v. Downs, Texas Supreme Court, No. 00-1309 (2002). However, there was a prior consistent decision from the Court of Appeals¹ regarding that same case. Further, Tex. W.C. Comm'n, 28 TEX ADMIN. CODE § 124.3 (Rule 124.3) requires the carrier to contest compensability within seven days or it is liable for benefits.

The claimant's motion to add an issue regarding the alleged waiver of the right to contest the compensability of the injury was first raised 10 days before the CCH. Section 410.151(b) provides, in part, that an issue that was not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Commission determines that good cause exists for not requesting the issue at the BRC. See *also* Rule 142.7. The claimant conceded, both in her response to the benefit review officer's report and in her later motion to reconsider the denial of the motion to add the issue, that the issue of waiver had not been requested at the BRC. The claimant asserts that at the time of the BRC there was not a recognized issue of waiver. The hearing officer found there was no good cause for the failure to add the issue. The claimant's assertion that there was no recognized issue of waiver is without merit. Under this set of facts, we cannot say that the hearing officer's ruling denying the claimant's request to add the requested issue amounted to an abuse of discretion. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

¹ Downs v. Continental Casualty Company, 32 S.W.3d 260 (Tex. App.-San Antonio 2000, pet. affirmed Tex. Sup. Ct. No. 00-1309 (2002)).

Accordingly, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge